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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.171 of 1989
Date of decision: 1.3.2007

The Commissioner of Income-Tax, Patiala ...Petitioner

Versus

M/S Guru Nanak Constn.Co. Malerkotla ...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Garg Narwana, Advocate for the revenue.

RAJESH BINDAL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') arising out of order dated 8.9.1988 passed in I.T.A.No.606/Chandi/87, in respect of the assessment year 1975-76..

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law and on facts in deleting disallowance of Rs.3,41,747/- made by the assessing officer on account of expenditure not pertaining to the accounting period relevant to the assessment year 1975-76?

The facts, as noticed by the Tribunal in the statement of the case, are that the assessee filed his return of income for the assessment year in question on August 29, 1975 declaring his income at Rs. 2,29,873/-. The assessment was framed at Rs. 3,17,970/- vide order dated February 29,1978, which was rectified on September 21, 1979 and the income was reduced to Rs. 2,28,296/-. Search and seizure operation under Section 132 of the Income Tax Act, 1961(for short 'the Act') was carried out at the premises of assessee wherein certain books of accounts and other

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documents were seized. On the basis thereof proceedings under Section 147(a) of the Act were initiated. During the course of re-assessment proceedings, the assessing officer noticed that as per seized books of accounts total expenditure was to the tune of Rs. 22,27,061/57 under various heads. Account also had an opening balance of Rs. 3,94,884/94, which was incurred prior to April 1, 1974, the date on which the assessee firm was constituted. It was also noticed that there was a credit balance of Rs. 53,847/- in the account leaving a debit balance of Rs. 3,41,747/-. These expenditure were disallowed by the assessing officer with the observations that the same do not relate to the assessment year in question. Disallowance was contested by the assessee before the Commissioner of Income-Tax (Appeals) (for short 'the CIT (A)') by raising contention that even though the firm was constituted on April 1, 1974 but the partners thereof were orally informed by the contracting department that work had been awarded to them, therefore, the job was undertaken even before April 1, 1974. It was further contended that expenditure related to the same work and thus allowable though incurred prior to April 1,1974 as the receipts against the work done were received by the assessee after April 1,1974. However, CIT(A) rejected the contention of the assessee. In further appeal before the Tribunal, the contention of the assessee was accepted and the expenditure in question was allowed as a deduction in the year in question with the following observations:-

> "We have given our careful consideration to the rival submissions. In our opinion, the assessee is entitled to these deductions even though the expenditure was incurred prior to 1.4.1974. The firm was not in existence before 1.4.1974. There was, therefore, no question of filing the return by the firm for the earlier period. Another view that the department could take was that the return should have been filed in the status of AOP. In our opinion, even this is not correct inasmuch as there could be no commencement of business unless there were sales. In the present case, the sales have to

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be equated with receipts from the contracting department. It is an admitted fact that receipts against the above work done prior to 1.4.1974 were received after 1.4.1974. Till receipt, these expenses could not be claimed and, therefore, the same had to be carried forward and allowed in the accounting period relevant to the assessment year under appeal. The Income-tax Officer and the CIT(A) were, therefore not justified in not allowing these claims. Their orders on this account are, therefore, reversed."

We have heard learned counsel for the revenue and perused the record.

Primary contention raised by learned counsel for the revenue is that the expenses having not been incurred during the year in question could not be allowed even if those were for the business of the assessee. However, from a perusal of the facts on record, which have been analysed by the Tribunal, the assessee spent amount in question during the previous year in which there were no receipt from business, accordingly, there was no question of its setting off against any income and the same had to be carried forward to the next year. A perusal of various heads under which the expenses were made by the assessee shows that the same relate to the business being conducted by him. This being the factual position on record, we do not find any illegality has been committed by the Tribunal in allowing these expenses as deduction during the year in question.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

March 01 ,2007 **(M.M.Kumar)**
Pka **Judge**